

Todd M. Friedman (216752)
Darin Shaw (251037)
Law Offices of Todd M. Friedman, P.C.
369 S. Doheny Dr. #415
Beverly Hills, CA 90211
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@attorneysforconsumers.com
dshaw@attorneysforconsumers.com
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ETHELYN HOLMES,)	Case No. <u>'11CV1173 JM BGS</u>
)	
Plaintiff,)	COMPLAINT FOR VIOLATION
)	OF FEDERAL FAIR DEBT
vs.)	COLLECTION PRACTICES ACT
)	AND ROSENTHAL FAIR DEBT
ALLSTATE FINANCIAL)	COLLECTION PRACTICES ACT
SERVICES, INC., a corporation;)	
MICHAEL O'CONNOR, an)	
individual,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of

1 which prohibit debt collectors from engaging in abusive, deceptive, and unfair
2 practices.

3 4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).

6 7 **III. PARTIES**

8 3. Plaintiff, Ethelyn Holmes (“Plaintiff”), is a natural person residing in
9 San Diego county in the state of California, and is a “consumer” as defined by the
10 FDCPA, 15 U.S.C. §1692a(3) and is a “debtor” as defined by Cal Civ Code
11 §1788.2(h).

12
13 4. At all relevant times herein, Defendant, Allstate Financial Services,
14 Inc. (“Defendant ALLSTATE”) was a company engaged, by use of the mails and
15 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
16 “debt,” as defined by 15 U.S.C. §1692a(5), and a “consumer debt,” as defined by
17 Cal Civ Code §1788.2(f). Defendant ALLSTATE regularly attempts to collect
18 debts alleged to be due another, and therefore is a “debt collector” as defined by
19 the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA, Cal Civ Code §1788.2(c).

20
21 5. At all relevant times herein, Defendant, Michael O’Connor
22 (“Defendant O’Connor”) was owner of Defendant ALLSTATE. As an officer,
23 shareholder and/or director of Defendant ALLSTATE, Defendant O’Connor was
24 responsible for the overall success of the company. Defendant O’Connor is a
25
26
27
28

1 “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA,
2 Cal Civ Code §1788.2(c): he materially participated in collecting debt by
3 occupying a position of critical importance to Defendant ALLSTATE’s business;
4 as the owner of Defendant ALLSTATE, he exercised control over the affairs of a
5 debt collection business; and he was regularly engaged, albeit more often
6 indirectly than directly, in the collection of debts through her involvement in
7 Defendant ALLSTATE’s affairs and Defendant O’Connor continued to play a
8 key role in maintaining and expanding Defendant ALLSTATE’s debt collection
9 activities throughout the time in question.
10
11
12

13 14 **IV. FACTUAL ALLEGATIONS**

15 6. At various and multiple times prior to the filing of the instant
16 complaint, including within the one year preceding the filing of this complaint,
17 Defendant ALLSTATE contacted Plaintiff in an attempt to collect an alleged
18 outstanding debt.
19
20

21 7. In February 2011, Defendant initially contacted Plaintiff in
22 connection with an attempt to collect an alleged debt.
23

24 8. Defendant is attempting to collect an alleged debt that was incurred
25 through a Gold’s gym membership.
26

27 9. In 2008, Plaintiff joined a gym membership, Fitzone program, on a
28 month to month basis, without a yearly contract or cancellation fees.

1 10. When the Fitzone program was shut down, Plaintiff's membership
2 was converted to a Gold's membership, maintaining a month to month payment.
3

4 11. Defendant falsely claimed that Plaintiff owed approximately \$800 in
5 monthly fees and cancellation charges, where no such charges should exist under
6 Plaintiff membership plan.
7

8 12. Defendant used false and deceptive practice in connection with an
9 attempt to collect an alleged debt, including but not limited to, failing to disclose
10 the true identity of Defendant during a telephone communication.
11

12 13. On more than one occasion, Defendant failed to disclose that the
13 communication was from a debt collector attempting to collect an alleged debt.
14

15 14. On more than one occasion, Defendant threatened further legal
16 action against Plaintiff, for failure to pay an alleged debt.
17

18 15. On more than one occasion, Defendant threatened seizure and/or
19 garnishment of Plaintiff's property or wages for failure to pay an alleged debt.
20

21 16. Defendant has failed to provide written notice within 5 days of the
22 initial contact.
23

24 17. Defendant ALLSTATE's conduct violated the FDCPA and the
25 RFDCPA in multiple ways, including but not limited to:
26

- 27 a) Falsely representing the character, amount, or legal
28 status of Plaintiff's debt (§1692e(2)(A));

- b) Using false representations and deceptive practices in connection with collection of an alleged debt from Plaintiff (§1692e(10));
- c) Failing to notify Plaintiff during the initial communication with Plaintiff that the communication was an attempt to collect a debt and any information obtained would be used for that purpose (§1692e(11));
- d) Failing to notify Plaintiff during each collection contact that the communication was from a debt collector (§1692e(11));
- e) Falsely representing or implying that nonpayment of Plaintiff's debt would result in the seizure, garnishment, attachment, or sale of Plaintiff's property or wages, where such action is not lawful or Defendant did not intend to take such action (§1692e(4));
- f) Threatening to take an action against Plaintiff that cannot be legally taken or that was not actually intended to be taken (§1692e(5));
- g) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (§1692d));
- h) Failing to provide Plaintiff with the notices required by 15 USC § 1692g, either in the initial communication with Plaintiff, or in writing within 5 days thereof (§1692g(a));
- i) Falsely using a business, company or organization name other than the true name of Defendant's business, company or organization (§1692e(14));

- 1
- 2
- 3 j) Failing to notify Plaintiff during the initial
- 4 communication with Plaintiff that the communication
- 5 was an attempt to collect a debt and any information
- 6 obtained would be used for that purpose (§1692e(11));
- 7
- 8 k) Failing to notify Plaintiff during each collection contact
- 9 that the communication was from a debt collector
- 10 (§1692e(11));
- 11
- 12 l) Threatening Plaintiff that nonpayment of Plaintiff's debt
- 13 may result in the arrest of Plaintiff or the seizure,
- 14 garnishment, attachment or sale of any property or the
- 15 garnishment or attachment of wages of Plaintiff, where
- 16 such action was not in fact contemplated by the debt
- 17 collector and permitted by the law (Cal Civ Code
- 18 §1788.10(e));
- 19
- 20 m) Threatening to take an action against Plaintiff that is
- 21 prohibited by § 1788 of the California Civil Code (Cal
- 22 Civ Code §1788.10(f)); and
- 23
- 24 n) Falsely representing that a legal proceeding has been, is
- 25 about to be, or will be instituted unless payment of a
- 26 consumer debt is made (Cal Civ Code §1788.13(j)).
- 27
- 28

23 18. Defendant O'Connor as owner of Defendant ALLSTATE is directly

24 responsible for Defendant ALLSTATE's violations.

25

26 19. As a result of the above violations of the FDCPA and RFDCPA,

27 Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal

28 humiliation, embarrassment, mental anguish and emotional distress, and

1 Defendants are liable to Plaintiff for Plaintiff's actual damages, statutory
2 damages, and costs and attorney's fees.
3

4 **COUNT I: VIOLATION OF FAIR DEBT**
5 **COLLECTION PRACTICES ACT**

6 20. Plaintiff reincorporates by reference all of the preceding paragraphs.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff respectfully prays that judgment be entered
10 against the Defendants for the following:
11

- 12 A. Declaratory judgment that Defendants' conduct
13 violated the FDCPA;
14 B. Actual damages;
15 C. Statutory damages;
16 D. Costs and reasonable attorney's fees; and,
17 E. For such other and further relief as may be just and proper.

18 **COUNT II: VIOLATION OF ROSENTHAL**
19 **FAIR DEBT COLLECTION PRACTICES ACT**

20 21. Plaintiff reincorporates by reference all of the preceding paragraphs.

21 22. To the extent that Defendants' actions, counted above, violated the
22 RFDCPA, those actions were done knowingly and willfully
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff respectfully prays that judgment be entered
26 against the Defendants for the following:
27

- 28 A. Declaratory judgment that Defendant's conduct

1 violated the RFDCPA;

2 B. Actual damages;

3 C. Statutory damages for willful and negligent violations;

4 D. Costs and reasonable attorney's fees,

5 E. For such other and further relief as may be just and proper.

6
7 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

8 Respectfully submitted this 28th day of May, 2011.
9

10
11 By: /s/ Todd M. Friedman
12 Todd M. Friedman (216752)
13 Law Offices of Todd M. Friedman, P.C.
14 369 S. Doheny Dr. #415
15 Beverly Hills, CA 90211
16 Phone: 877 206-4741
17 Fax: 866 633-0228
18 tfriedman@attorneysforconsumers.com
19 Attorney for Plaintiff
20
21
22
23
24
25
26
27
28

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ETHELYN HOLMES

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Todd M. Friedman, P.C.
369 S. Doheny Dr., #415, Beverly Hills, CA 90211

DEFENDANTS

ALLSTATE FINANCIAL SERVICES, INC.; and MICHAEL O'CONNOR, an individual

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'11CV1173 JM BGS**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692

Brief description of cause:
Violation of the Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/28/2011

/s Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____